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09/866,652	05/30/2001	Tommaso Innocenti		5784

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EXAMINER

KYLE, CHARLES R

ART UNIT PAPER NUMBER

3624

DATE MAILED: 10/01/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/866,652

Applicant(s)

INNOCENTI, TOMMASO *h*

Examiner

Charles R Kyle

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 July 2002.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All   b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- 4) ☒ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 1-25** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Auction This! Your Complete Guide to the World of Online Auctions* by Prince in view of *Flexible Double Auctions for Electronic Commerce: Theory and Implementation* by Wurman et al.

**Regarding Claim 1**, *Auction This* discloses the invention substantially as claimed, including in a business method intended to facilitate flexible terms commodity trading the steps of:

a) Providing, upon a web site accessible upon the world wide web (pages 79-81), a proposal format (page 125, second paragraph) in which the commodity, quantity, price, and quality desired by a prospective buyer in completion of a submission for initiating an open bid (page 21, "Bidders Can Be Choosers"; pages 64 and 85);

b) Providing, upon a web site accessible upon the world wide web (pages 79-81), a proposal format (page 125, second paragraph) in which the commodity, quantity, price, and quality offered by a prospective seller in completion of a submission for initiating an open offer (page 23, "Sellers Find their Market; pages 64 and 85);

c) Posting upon said web site a listing for a specified lot of commodity in accordance with a completed proposal submission (page 124, Fig. 7-4) detailing a plurality of terms including but not restricted to delivery and payment (page 124, Fig. 7-4) comprising an open offer of said specified lot when initiated by a prospective seller;

d) Scheduling an auction of said specified lot by posting a plurality of schedule dates including but not restricted to commencement and conclusion dates between which responses to said listing will be received (page 207);

e) Indicating upon said web site, in association with said listing, the matching in all said terms between any offer and any bid both concerned with said specified lot (page 213).

*Auction This* does not specifically disclose that the type of auction can be specified or that the auction is two-way (sellers and buyers making proposals). *Wurman* discloses these features at page 2, first full paragraph and page 3, second full paragraph respectively. It would have been obvious to one of ordinary skill in the art at the time of the invention to have allowed auction-type specification as disclosed by *Wurman* in the auctions disclosed by *Auction This* because this would have provided a means to very specifically describe the proposed auction of *Auction This* in terms of the options described in *Wurman* at page 2, second full paragraph. Further, it would have been obvious to have executed the commodity auction disclosed by *Auction This* using the

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two-way auction format disclosed by *Wurman* because this would have been a format suitable for the exchange of commodities.

Further, the compatibility of *Auction This* and *Wurman* is indicated by cites at page 121-122 and page 2, first full paragraph respectively.

As to the limitations of counter-bids and response to counter-bids, these were well known negotiating techniques within auctions and are suggested by *Wurman* at page 2, second full paragraph.

**Regarding Claim 2**, *AuctionThis* discloses deposing listing indication after matching at page 208, "Warning".

**With respect to Claim 3**, at page 1, *Wurman* discloses the use of agents and suggests the use of plural configuration websites to allow buyers and sellers to find and negotiate with each other.

**Regarding Claim 4**, *Wurman* discloses a single website for auction configuration at page 2.

**Concerning Claims 5 and 6**, *Auction This* discloses e-mail notification to subscribers of listings of interest at page 72, fifth paragraph. See also page 167, fourth paragraph.

**With respect to Claim 7**, *Auction This* discloses registration of buyers with an auction house at page 69, paragraph 4.

**Regarding Claim 8**, see the discussion of Claim 8 above and *Auction This* further discloses payment of fees by a buyer at page 167, fifth paragraph.

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**With respect to Claim 9,** *Auction This* discloses registration of sellers with an auction house at page 69, paragraph 4.

**As to Claim 10,** *Auction This* discloses a seller's fee at page 112, last paragraph to page 113, first full paragraph.

**Regarding Claim 11,** *Auction This* discloses directory access to a plurality of commodity categories at page 71, paragraph 4. Subscriptions are disclosed at page 166.

**With respect to Claim 12,** see the discussion of Claim 11 and *Auction This* further discloses listing subscriptions at page 166.

**With respect to Claim 13,** *Auction This* discloses listing subscriptions fees at page 166.

**With respect to Claims 14-25,** they recite limitations which describe straight, Dutch and proxy bidding auctions. Such bidding features are well known in the auction art, as set forth in the discussion of the claims below.

**Concerning Claim 14,** *Auction This* and *Wurman* disclose the invention substantially as claimed. See the discussion of Claim 1 above. *Auction This* further discloses an upward, open, unconstrained auction (page 63, "Straight Auction") with a initial minimum (reserve) price (page 64, "Reserve Price Auctions").

**Concerning Claim 15,** see the discussion of Claim 14 and *Auction This* further discloses the use or bid increments at page 85, "Bid Increment".

**Regarding Claim 18,** *Auction This* discloses a downward, incremental, constrained auction (page 64, "Dutch Auction") with an initial maximum price and price decrease in progressive increments (page 98-99, "Real Dutch Auctions"). A predetermined minimum price

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in this form of auction would be the equivalent of the maximum proxy bid in a straight auction disclosed by *Auction This* at page 65, "Proxy Bidding".

**Regarding Claim 20**, *Auction This* discloses a downward, open, unconstrained auction (page 64, "Dutch Auction") with an initial maximum price (starting price; page 98).

**With respect to Claim 21**, see the discussion of Claim 18 and note that it is the "buyer side" specification of Claim 18 and could be specified by the buyer per the teaching of *Wurman*.

**With respect to Claim 24**, *Auction This* discloses an upward, incremental, constrained bidding with an initial minimum price (pages 64 and 85) and a predetermined maximum price (page 65, "Proxy Bidding").

**With respect to Claims 16, 19, 22 and 25**, as set forth in the discussions above *Auction This* discloses incremental bidding. It would have been obvious to one of ordinary skill in the art at the time of the invention to have incrementally changed prices with respect to time because this would have "moved the auction along" as well as creating a feeling of urgency to participants which would increase auction profitability.

**Regarding Claims 17 and 23**, incrementing based on the number of bids received would have brought an auction to a timely end. Rather than waiting for indeterminate time for a next bid, the auctioneer could determine the level of interest in the auction by the number of bids. Fewer bids would indicate a need for incremental change in price which would have expedited the auction.

**Claims 26-39** are rejected under 35 U.S.C. 103(a) as being unpatentable over *Auction This* and *Wurman* in view of *Forage Buy-Sell Contracts* by Palmer.

**Concerning Claim 33,** *Auction This* and *Wurman* disclose the invention substantially as claimed. See the discussion of Claim 1 above. They do not specifically disclose providing samples of a commodity by a seller. *Palmer* discloses this feature at page 8. It would have been obvious to one of ordinary skill in the art at the time of the invention for the seller to provide samples of auction commodities as disclosed by *Palmer* in the auction combination of *Auction This* and *Wurman* because this would have allowed bidders and sellers to adjust commodity pricing to reflect quality as specifically taught by *Palmer* at page 8. See also page 2, first paragraph and pages 5-8.

**With respect to Claim 34,** *Palmer* discloses that the seller provides a commodity sample at page 8, second and third full paragraphs.

**With respect to Claims 35 and 37,** it would have been obvious for the auction house to have been a conduit for the seller to buyer sample transfer because this would have allowed the contracting parties to maintain anonymity.

**Regarding Claim 36,** *Palmer* discloses laboratory testing of commodities at page 8, third full paragraph. It would have been obvious to have posted such results to a web-site because this would have allowed all participants to know lot quality and adjusted pricing accordingly.

**Regarding Claim 38,** it would have been obvious to have provided proportional divisions of a sample to prospective buyers for assessment because this would have assured comparable sub-samples and would have allowed bidders to adjust their bids based on equivalent quality of sub-samples. This is “comparing apples to apples” – literally.

**Concerning Claim 39,** see the discussion of claim 38.

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**With respect to Claims 26-32**, see the discussions of Claims 33-39 and Claim 1 and consider that similar considerations would apply for the buyer supplied commodity sample in a two-way auction. In this case the buyer would have provided a sample as a demonstrator of quality sought rather than provided as with a seller.

### ***Response to Arguments***

Applicant's arguments filed July 2, 2002 have been fully considered but they are not persuasive.

Applicant's arguments are voluminous and the Examiner has to the best of his ability condensed and responded to them below. To simplify response, the Examiner will address the points set forth at page 12 of Applicant's response which appear to summarize arguments given in the rest of the response.

Applicant argues at point a) that the prior art of record does not teach or disclose the specification of a type of auction by buyer and seller. Such specification is inherent in the choice of which form of auction the user chooses to participate in. At page 125 of the *Auction This* reference, a standard, proxy and reserved price bid are disclosed. A user would select an auction and by doing so, specify the auction type. Applicant provides detail in his specification of auction specification, but provides no such detail in the claim language presented; no patentably distinct feature is claimed.

Concerning Applicant's argument on point b), *Auction This* does disclose such a listing as claimed. As cited, Figure 7-4, a proposal to sell ("Item #158190319"), discloses quantity

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("Quantity"), price ("Starts At", "First Bid"), and quality ("Yellow Submarine *orig* movie window card").

Concerning Applicant's argument on points c) and d), regarding counter-offers, Applicant fails to show specifically, where the suggestion by *Wurman* at page 2, second full paragraph is deficient. Applicant appears to argue that price is not a term of negotiation. Applicant's claim language recites "which vary in *at least one term*"; (italics added). The Examiner reads this term as price, which is clearly something widely known to be negotiable. Applicant fails to say how other claimed terms, if any, distinguish over price.

As to Applicant's discussion point e), Applicant fails to describe how the *Palmer* reference cited is deficient. Applicant does not address the citation of *Palmer* or the Examiner's motivation to combine *Palmer* with the other references.

Additionally, at pages 6-9 of the response, Applicant discusses other features. At page 6, Applicant argues that the Continuous Two-Way auction is not as claimed. This auction is inherently two-way; Applicant argues non- claimed features or features addressed above at the middle of page 7 of the response.

Finally at page 9, Applicant fails to describe how his claimed "commodity" distinguishes over the items disclosed by the prior art of record. Applicant shows what appear to be industrial commodities in the specification and drawings, but the claims offer no guidance as to what constitutes a "commodity".

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***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Charles Kyle whose telephone number is (703) 305-4458. The examiner can normally be reached on Monday - Friday, 8:30 - 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Vincent Millin can be reached on (703) 308-1065. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 746-7239 for regular communications and (703) 746-7238 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 305-3900.

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crk

September 30, 2002

  
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